REMARKS

Reconsideration and withdrawal of the restriction requirement are respectfully requested in view of the remarks herewith.

The September 8, 2008 Office Action called for a restriction to one of the following inventions as required under 35 U.S.C. 121 and 372:

I. Claims 1-11 and 13, drawn to a product of formula Ia or Ib variously classified in classes 514, 544, 546 and 548.

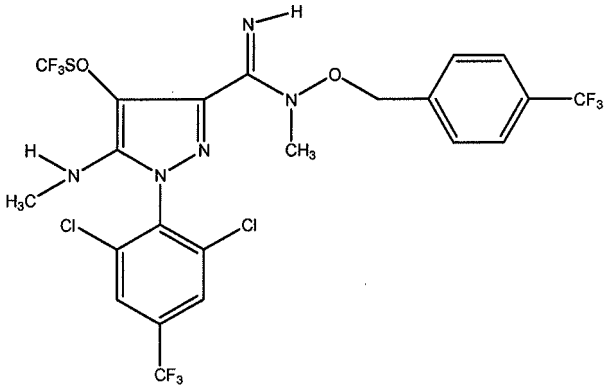
II. Claims 16-20, drawn to a method of use of product of formula I variously classified in classes 514, 544, 546 and 548.

III. Claim 12, drawn to a process for making a product of formula Ia or Ib variously classified in classes 514, 544, 546 and 548.

Applicant elects, with traverse, Group II, which relates to a method of use of product of formula I and encompasses claims 16-20. Applicants reserve the right to file divisional applications to non-elected subject matter. Reconsideration and withdrawal of the restriction requirement are respectfully requested in view of the remarks herewith.

The Office Action also required election of a single disclosed species.

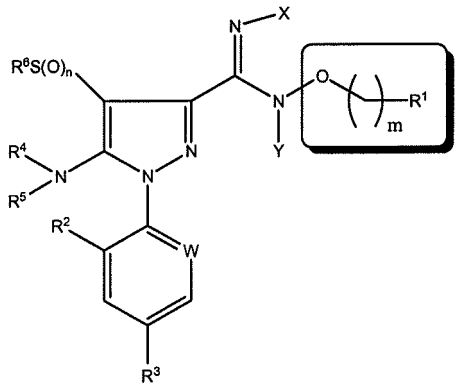
Applicants elect compound of formula I, wherein R^1 is 4-CF_3-phenyl, R^2 is Cl; R^3 is CF_3; R^4 is H; R^5 is CH_3; R^6 is CF_3, X is H, Y is CH_3, W is C-Cl, n is 1 and m = 1 (compound 4-93, Table 4, page 33 of the specification as filed), with traverse:



Compound **4-93**

The Office Action alleges that the inventions listed as Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2 they lack the same or corresponding special technical feature. Applicants respectfully disagree.

It is respectfully submitted, that the special feature which links the claims of Groups I – III is a compound of formula I having a specific substituent, $-O(CH_2)_mR^1$ as shown below:



Formula Ia

The compound of formula I is a special technical feature that links together Groups I-III, as compound and composition, a method of making compounds of formula I, and a method of use of compounds of formula I, as to form a single general inventive concept under PCT Rule 13.1.

Moreover, Applicants respectfully urge that the Restriction Requirement would be improper under US practice as the Office Action does not demonstrate that searching all the compounds would constitute an undue burden. The MPEP lists two criteria for a proper restriction requirement. First, the invention must be independent or distinct. MPEP § 803. Second, searching the additional invention must constitute an undue burden on the examiner if restriction is not required. *Id.* The MPEP directs the examiner to search and examine an entire application "[i]f the search and examination of an entire application can be made without serious burden, …even though it includes claims to distinct or independent inventions." *Id.* It is urged that the requirements contained in the outstanding Office Action do not comply with this second requirement.

The present claims are directed to compound of formula Ia or Ib. As these compounds all share this core, the searches for the compounds would overlap and searching all the compounds would not constitute an undue burden. The Office Action does not present any evidence to rebut this position. Accordingly, it is urged that the Requirement has not established that searching all the groups, while distinct, constitutes an undue burden and reconsideration and modification or withdrawal of this requirement is requested.

In summary, enforcing the present restriction requirement would result in inefficiencies and unnecessary expenditures by both the Applicant and the PTO, as well as extreme prejudice to Applicant (particularly in view of GATT, whereby a shortened patent term may result in any divisional applications filed). Restriction has not been shown to be proper, especially since it has been shown that the requisite showing of serious burden has not been made. Indeed, the search and examination of each invention would be likely co-extensive and, in any event, would involve such interrelated art that the search and examination of the entire application can be made without undue burden on the Examiner. All of the preceding, therefore, mitigate against restriction.

In view of the above, reconsideration and withdrawal of the restriction requirement are requested.

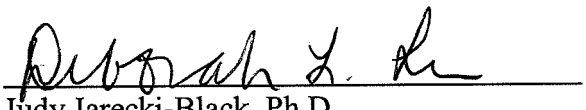
CONCLUSION

In view of the remarks herein, reconsideration and withdrawal of the restriction requirement are requested.

Early and favorable consideration of the application on the merits, and early Allowance of the application are earnestly solicited.

No fee is believed to be due. The Commissioner is authorized to charge any fee occasioned by this paper, or credit any overpayment in fees, to Deposit Account No. 50-0320.

Respectfully submitted,
MERIAL LIMITED
FROMMER LAWRENCE & HAUG LLP

By: 

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